

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

IN RE: ADM 2003-22:1 through 11

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Submitted By:  
Carlo J. Martina (P-30218)  
Chair, Family Support Committee  
State Bar of Michigan Family Law Section Council

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TESTIMONY BEFORE THE MICHIGAN SUPREME COURT OF  
CARLO J. MARTINA

May it please the Court, my name is Carlo J. Martina, and for the last year and a half, I have had the honor and privilege to sit as Chair, last year of the State Bar of Michigan Family Law Council's Ad Hoc Committee on Child Support, and this year as Chair of the newly formed Family Support Committee, an amalgam of three former committees, combining a focus on child support issues, as well as the issues formerly handled by the Alimony and Friend of the Court Committees.

We began the process of reviewing the evolving proposed recommendations to modify the Michigan Child Support Manual beginning with those made by Policy Studies, Inc. in its Report on the Michigan Child Support Formula, dated April 12, 2002. The Committee, while comprised of members with diverse viewpoints, committed itself to focusing on what would be fair and equitable to both parties, as well as their children, and to report to the Council its findings without bias to on gender or another.

During this process, we heard from knowledgeable and diverse viewpoints, including Craig Ross and Murray Davis, Roland Fancher and Kent Weichmann, among others. We solicited input from the bench, family law list serve members, and Friend of the Court personnel.

I have personally spoken with members of the Bar up in Marquette, where I participated in a Family Law Council State Of The Law Seminar last summer; members of the Oakland County Friend of the Court Family Law Task Force, of which I am a member; and members of the Wayne County Family Law Bar Association, for which I serve as its liaison to the Family Law Council.

Most importantly, I have presented the Committee's findings to the Family Law Council of the State Bar of Michigan, on an ongoing basis. Our most recent Report and

recommendations was presented to the Family Law Council for evaluation regarding the proposed changes to the Michigan Child Support Formula Manual, as outlined in ADM 2003-22:1 through 11. A copy of the Report of the Family Law Section, Committee on Family Support, dated May 30, 2003, is being provided to this Court and is attached as an Exhibit 1 to this summary of my testimony.

I would note that prior Reports and Recommendations of our Committee, adopted by the Council, were submitted to the State Court Administrative Office. The first was presented to Mr. William Bartels and Mr. John Ferry, Jr., under a cover letter of October 16, 2002, a copy of which is being provided to this Court as Exhibit 2.

Subsequently, our Committee received a copy of the proposed 2003 Child Support Formula Manual. A Committee Report and Recommendation regarding the new Manual was presented to the Family Law Council, which adopted the Committee's Recommendations. A summary of the Report of our Committee was forwarded to Mr. William Bartels and Mr. John Ferry, Jr., under a cover letter of January 7, 2003, a copy of which is attached hereto as an exhibit, marked Exhibit 3.

These latter two exhibits will give the Court some degree of perspective of the work and findings of the Committee, as information was made known to us by the State Court Administrative Office, regarding proposed changes to the Michigan Child Support Formula Manual.

Following this Court's announced stay of the implementation of the 2003 edition of the Michigan Child Support Formula Manual, the Committee reviewed the most recent proposed changes to the Manual, published by this Court on April 21, 2003. Our findings were presented to the Michigan Family Law Council at its June 2003 meeting.

After considerable debate, the State Bar of Michigan Family Law Section Council, by unanimous vote of its members, agreed to adopt the Child Support Committee's recommendations. It is significant that the Council's vote was unanimous. The Family Law Council, as this Court is well aware, is comprised of a diverse group of experienced family law practitioners, from a variety of Circuit Courts throughout the State. Some are sole practitioners; others are from large firms. Many have multi-circuit practices. This diverse group of family law practitioners, elected to represent the Family Law Section, unanimously adopted the Family Support Committee's Recommendations, as more fully expressed in the attached Report, marked Exhibit 1, and summarized as follows:

1. If the Court is to explicitly provide in Section 2.01 of the Manual, that child support is to be calculated before the determination of spousal support, then the manual should also explicitly state that:

“In the event that spousal support is found to be appropriate, then spousal support shall be based on the *net*

*income* of the payer and the payee, after considering payment of child support and child care expenses.”

Because child support and child care are paid with after-tax dollars, that impact on the cash flow of the payer must be considered. Otherwise, the determination of alimony would be based on phantom income, no longer possessed by the payer.

2. If it benefits net family income, child support and spousal support should be allowed to be reallocated, so long as the spousal support is for the actual support and maintenance of a spouse (as opposed to a pass through of a property settlement, through spousal support.) Any Order providing for such reallocation, must explicitly express the intent of the parties, so that any subsequent review will take the particulars of that reallocation into consideration.

3. Section 3.08(A), Allocation of Premiums, should be deleted in its entirety. Section 2.11(E) already considers this cost in determining the payer’s income.

4. Medical Support changes under Section 3.08(A)(C)(D) and (E) are unnecessary and should not be adopted.

The present system for allocation and payment of medical expenses is far less complicated, and most importantly, it works. The proposed changes will be an administrative nightmare for an already overburdened Friend of the Court, and an accounting nightmare for the parties.

5. The Council is pleased that the 128-day cliff effect of the squared version of the Shared Economic Formula has been eliminated by use of Mr. Weichmann’s ingenious cubed approach. However, commencing use of the Shared Economic Formula at 52 overnights is inappropriate and unduly burdensome. It is recommended that implementation start after 92 overnights.

The vast majority of cases family law practitioners deal with on a day to day basis, typically involve variants of an alternating weekend schedule, possibly a weekday overnight, with two to three weeks of uninterrupted summer time, alternating holidays, and shared school breaks. At most, they may approach 92 overnights . . . numbers at or below 25% of the year.

Deviation from a formula whose premise was to provide a simple, uniform formula for the vast majority of cases, starting at a number of overnights significantly less than typical parenting time schedules, makes deviation the rule, rather than the exception.

Additionally, use of the Shared Economic Responsibility Formula commencing at 52 overnights, also prevents reasonable parties from agreeing to reasonable and liberal parenting time orders.

6. The Council believes that the Shared Economic Adjustment Format of 3.06 is also ill advised. It provides far less equal treatment for the payee than it does payers. It will spur on needless and costly litigation, at a time when this Court is attempting to simplify matters, rather than make them more complicated.

Additionally, besides the difficult task of trying to ferret out conflicting testimony of parties, as to what visitation was and/or was not exercised, and the reasons why, the practical effect of any such recalculation would result in a retroactive modification of child support, contrary to both Federal and State law.

The details of the Council's recommendations, as it relates to these provisions which I have just briefly identified, is more fully set forth in the attached Report, Exhibit A.

As to the remainder of the most recent proposed changes to the Michigan Child Support Manual, the Council unanimously supports their adoption.

Respectfully submitted,

Carlo J. Martina, Chair  
Family Support Committee  
State Bar of Michigan Family Law Section Council